

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 499**

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**Introduced by Senator Wyland**

February 21, 2013

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~~An act to amend Section 103 of the Revenue and Taxation Code, relating to taxation. An act to amend Sections 110 and 402.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 499, as amended, Wyland. Property taxation: ~~property: definition: assessment: affordable housing.~~

*The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, existing property tax law defines "full cash value" as the assessor's fair market value valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law generally defines this "full cash value" of property as the property's fair market value. Existing law rebuttably presumes that the fair market value of real property, other than possessory interests, is the purchase price paid in the transaction for the property. For purposes of this presumption, existing law defines "purchase price" as the total consideration provided by the purchaser or on the purchasers behalf, valued in money, whether paid in money or otherwise. Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these*

*restrictions include, but are not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.*

*This bill would exclude from the meaning of purchase price, for purposes of the rebuttable presumption that the purchase price of real property is the fair market value of the property, the amount stated in a deed of trust, recorded in conjunction with an affordable housing unit purchased by its occupant, for which that occupant is the trustor and a nonprofit or governmental agency selling authority is the beneficiary, both have contracted that a periodic payment of principal and interest will not be required for at least 30 years, and a governmental restriction requiring the property to remain an affordable housing unit for at least 30 years has been recorded against the affordable housing unit. This bill would also require the county assessor to consider, when valuing real property for property taxation purposes, restrictions on the resale price of real property in a recorded real property deed or other recorded real property transfer document for real property that was purchased by its occupant through an affordable housing program operated by a city, a county, the state, or a nonprofit organization. By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

*Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.*

*This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.*

*This bill would take effect immediately as a tax levy.*

~~Existing property tax law defines property to include all matters and things, real, personal, and mixed, that are capable of private ownership.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*  
3     *(a) It is important to provide affordable housing in this state.*  
4     *(b) Affordable housing programs provide families with an*  
5     *opportunity to better their lives and the lives of their children by*  
6     *making available the American dream of home ownership.*  
7     *(c) Section 402.1 of the Revenue and Taxation Code already*  
8     *requires county assessors to consider the effect of enforceable*  
9     *restrictions on land when assessors value that land for property*  
10    *taxation purposes.*  
11    *(d) This act would extend this existing practice of considering*  
12    *the effect of enforceable restrictions placed on land pursuant to*  
13    *an affordable housing program that assists families in purchasing*  
14    *their own homes and silent second mortgages that may affect the*  
15    *fair market value of that property.*  
16    *(e) Therefore, it is the intent of the Legislature in enacting this*  
17    *act to further a state public policy of encouraging and maintaining*  
18    *effective land use planning by ensuring that homes purchased*  
19    *under an affordable housing program are valued for property*  
20    *taxation purposes in a manner that reflects the restrictions on the*  
21    *property.*  
22    *(f) It is also the intent of the Legislature, in enacting this act,*  
23    *to make the necessary statutory changes to provide that, if a*  
24    *homeowner is participating in an affordable housing program,*  
25    *the purchase price for an affordable housing unit shall not include,*  
26    *for purposes of taxation under the ad valorem property tax, the*  
27    *amount secured by a deed of trust recorded in conjunction with*  
28    *the purchase of an affordable housing unit.*  
29    *SEC. 2. Section 110 of the Revenue and Taxation Code is*  
30    *amended to read:*  
31    110. (a) Except as is otherwise provided in Section 110.1, “full  
32    cash value” or “fair market value” means the amount of cash or  
33    its equivalent that property would bring if exposed for sale in the

1 open market under conditions in which neither buyer nor seller  
2 could take advantage of the exigencies of the other, and both the  
3 buyer and the seller have knowledge of all of the uses and purposes  
4 to which the property is adapted and for which it is capable of  
5 being used, and of the enforceable restrictions upon those uses and  
6 purposes.

7 (b) For purposes of determining the “full cash value” or “fair  
8 market value” of real property, other than possessory interests,  
9 being appraised upon a purchase, “full cash value” or “fair market  
10 value” is the purchase price paid in the transaction unless it is  
11 established by a preponderance of the evidence that the real  
12 property would not have transferred for that purchase price in an  
13 open market transaction. The purchase price shall, however, be  
14 rebuttably presumed to be the “full cash value” or “fair market  
15 value” if the terms of the transaction were negotiated at arms length  
16 between a knowledgeable transferor and transferee neither of which  
17 could take advantage of the exigencies of the other. “Purchase  
18 price,” as used in this section, means the total consideration  
19 provided by the purchaser or on the purchaser’s behalf, valued in  
20 money, whether paid in money or otherwise, *but, beginning with*  
21 *the lien date for the 2014–15 fiscal year and for each fiscal year*  
22 *thereafter, does not include the amount secured by a deed of trust,*  
23 *recorded in conjunction with the purchase of an affordable housing*  
24 *unit by its occupant, for which that occupant is the trustor and a*  
25 *nonprofit organization or governmental agency selling authority*  
26 *is the beneficiary, both have contracted that a periodic payment*  
27 *of principal and interest will not be required for at least 30 years,*  
28 *and a governmental restriction requiring the property to remain*  
29 *an affordable housing unit for at least 30 years has been recorded*  
30 *against the affordable housing unit..* There is a rebuttable  
31 presumption that the value of improvements financed by the  
32 proceeds of an assessment resulting in a lien imposed on the  
33 property by a public entity is reflected in the total consideration,  
34 exclusive of that lien amount, involved in the transaction. This  
35 presumption may be overcome if the assessor establishes by a  
36 preponderance of the evidence that all or a portion of the value of  
37 those improvements is not reflected in that consideration. If a single  
38 transaction results in a change in ownership of more than one  
39 parcel of real property, the purchase price shall be allocated among

those parcels and other assets, if any, transferred based on the relative fair market value of each.

(c) For real property, other than possessory interests, the change of ownership statement required pursuant to Section 480, 480.1, or 480.2, or the preliminary change of ownership statement required pursuant to Section 480.4, shall give any information as the board shall prescribe relative to whether the terms of the transaction were negotiated at ~~“arms-length.”~~ *“arm’s length.”* In the event that the transaction includes property other than real property, the change in ownership statement shall give information as the board shall prescribe disclosing the portion of the purchase price that is allocable to all elements of the transaction. If the taxpayer fails to provide the prescribed information, the rebuttable presumption provided by subdivision (b) shall not apply.

(d) Except as provided in subdivision (e), for purposes of determining the “full cash value” or “fair market value” of any taxable property, all of the following shall apply:

(1) The value of intangible assets and rights relating to the going concern value of a business using taxable property shall not enhance or be reflected in the value of the taxable property.

(2) If the principle of unit valuation is used to value properties that are operated as a unit and the unit includes intangible assets and rights, then the fair market value of the taxable property contained within the unit shall be determined by removing from the value of the unit the fair market value of the intangible assets and rights contained within the unit.

(3) The exclusive nature of a concession, franchise, or similar agreement, whether de jure or de facto, is an intangible asset that shall not enhance the value of taxable property, including real property.

(e) Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use.

(f) For purposes of determining the “full cash value” or “fair market value” of real property, intangible attributes of real property shall be reflected in the value of the real property. These intangible attributes of real property include zoning, location, and other attributes that relate directly to the real property involved.

*SEC. 3. Section 402.1 of the Revenue and Taxation Code is amended to read:*

1     402.1. (a) In the assessment of land, the assessor shall consider  
2 the effect upon value of any enforceable restrictions to which the  
3 use of the land may be subjected. These restrictions shall include,  
4 but are not limited to, all of the following:

5     (1) Zoning.

6     (2) Recorded contracts with governmental agencies other than  
7 those provided in Sections 422 and 422.5.

8     (3) Permit authority of, and permits issued by, governmental  
9 agencies exercising land use powers concurrently with local  
10 governments, including the California Coastal Commission and  
11 regional coastal commissions, the San Francisco Bay Conservation  
12 and Development Commission, and the Tahoe Regional Planning  
13 Agency.

14     (4) Development controls of a local government in accordance  
15 with any local coastal program certified pursuant to Division 20  
16 (commencing with Section 30000) of the Public Resources Code.

17     (5) Development controls of a local government in accordance  
18 with a local protection program, or any component thereof, certified  
19 pursuant to Division 19 (commencing with Section 29000) of the  
20 Public Resources Code.

21     (6) Environmental constraints applied to the use of land pursuant  
22 to provisions of statutes.

23     (7) Hazardous waste land use restriction pursuant to Section  
24 25240 of the Health and Safety Code.

25     (8) A recorded conservation, trail, or scenic easement, as  
26 described in Section 815.1 of the Civil Code, that is granted in  
27 favor of a public agency, or in favor of a nonprofit corporation  
28 organized pursuant to Section 501(c)(3) of the Internal Revenue  
29 Code that has as its primary purpose the preservation, protection,  
30 or enhancement of land in its natural, scenic, historical, agricultural,  
31 forested, or open-space condition or use.

32     (9) A solar-use easement pursuant to Chapter 6.9 (commencing  
33 with Section 51190) of Part 1 of Division 1 of Title 5 of the  
34 Government Code.

35     (10) *Beginning with the lien date for the 2014–15 fiscal year*  
36 *and for each fiscal year thereafter, restrictions on the resale price*  
37 *of real property in a recorded real property deed or other recorded*  
38 *real property transfer document for real property that was*  
39 *purchased by its occupant through an affordable housing program*

1 *operated by a city, a county, a city and county, the state, or a*  
2 *nonprofit organization.*

3 (b) There is a rebuttable presumption that restrictions will not  
4 be removed or substantially modified in the predictable future and  
5 that they will substantially equate the value of the land to the value  
6 attributable to the legally permissible use or uses.

7 (c) Grounds for rebutting the presumption may include, but are  
8 not necessarily limited to, the past history of like use restrictions  
9 in the jurisdiction in question and the similarity of sales prices for  
10 restricted and unrestricted land. The possible expiration of a  
11 restriction at a time certain shall not be conclusive evidence of the  
12 future removal or modification of the restriction unless there is no  
13 opportunity or likelihood of the continuation or renewal of the  
14 restriction, or unless a necessary party to the restriction has  
15 indicated an intent to permit its expiration at that time.

16 (d) In assessing land with respect to which the presumption is  
17 un rebutted, the assessor shall not consider sales of otherwise  
18 comparable land not similarly restricted as to use as indicative of  
19 value of land under restriction, unless the restrictions have a  
20 demonstrably minimal effect upon value.

21 (e) In assessing land under an enforceable use restriction wherein  
22 the presumption of no predictable removal or substantial  
23 modification of the restriction has been rebutted, but where the  
24 restriction nevertheless retains some future life and has some effect  
25 on present value, the assessor may consider, in addition to all other  
26 legally permissible information, representative sales of comparable  
27 lands that are not under restriction but upon which natural  
28 limitations have substantially the same effect as restrictions.

29 (f) For the purposes of this section the following definitions  
30 apply:

31 (1) "Comparable lands" are lands that are similar to the land  
32 being valued in respect to legally permissible uses and physical  
33 attributes.

34 (2) "Representative sales information" is information from sales  
35 of a sufficient number of comparable lands to give an accurate  
36 indication of the full cash value of the land being valued.

37 (g) It is hereby declared that the purpose and intent of the  
38 Legislature in enacting this section is to provide for a method of  
39 determining whether a sufficient amount of representative sales  
40 information is available for land under use restriction in order to

1 ensure the accurate assessment of that land. It is also hereby  
2 declared that the further purpose and intent of the Legislature in  
3 enacting this section and Section 1630 is to avoid an assessment  
4 policy which, in the absence of special circumstances, considers  
5 uses for land that legally are not available to the owner and not  
6 contemplated by government, and that these sections are necessary  
7 to implement the public policy of encouraging and maintaining  
8 effective land use planning. Nothing in this statute shall be  
9 construed as requiring the assessment of any land at a value less  
10 than as required by Section 401 or as prohibiting the use of  
11 representative comparable sales information on land under similar  
12 restrictions when this information is available.

13 *SEC. 4. If the Commission on State Mandates determines that*  
14 *this act contains costs mandated by the state, reimbursement to*  
15 *local agencies and school districts for those costs shall be made*  
16 *pursuant to Part 7 (commencing with Section 17500) of Division*  
17 *4 of Title 2 of the Government Code.*

18 *SEC. 5. Notwithstanding Section 2229 of the Revenue and*  
19 *Taxation Code, no appropriation is made by this act and the state*  
20 *shall not reimburse any local agency for any property tax revenues*  
21 *lost by it pursuant to this act.*

22 *SEC. 6. This act provides for a tax levy within the meaning of*  
23 *Article IV of the Constitution and shall go into immediate effect.*

24 ~~SECTION 1. Section 103 of the Revenue and Taxation Code~~  
25 ~~is amended to read:~~

26 ~~103. "Property" includes all those matters and things, real,~~  
27 ~~personal, and mixed, that are capable of private ownership.~~